

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2442 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No

HARMANBHAI G PATEL

Versus

BHAGWANBHAI B VALAND

Appearance:

MR AJ PATEL for Petitioner

MR PJ VYAS for Respondent No. 1

MR. KAMAL MEHTA, AGP for Respondent No. 2

CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 28/07/97

ORAL JUDGEMENT

1. Present Special Civil Application invoking this Court's jurisdiction under Article 227 of the Constitution of India was filed as back as 9th of May 1984 and rule nisi was also issued in the month of September 1984. After lying in the cold storage for a period of about 13 years, matter is re-notified before

this court and this court has extensively heard the learned counsel appearing for the parties.

2. The petitioner - Harmanbhai G. Patel has, inter alia, prayed for issuance of writ of certiorari to quash and set aside the orders of the authorities at Annexures - 'D', 'E', and 'F' and to restore the original order of grant of land at Annexure-B to him passed by the Taluka Development Officer, Petlad.

3. It appears that State of Gujarat through its Revenue Department by Resolution dated 16th of September, 1970 pursuant to Rule 43(b) granted some power to the Collector to grant strips of land which are located between the houses or between the houses of ownership and the road and which is of irregular size and dimensions and which is not capable of being disposed of as independent plot by Collector and has by the said Resolution issued certain terms and conditions subject to which, such strips of land would be disposed of. The terms and conditions set out in such resolution dated 16th September, 1970, are very elaborate and undoubtedly referred to a small strip of land situated either adjacent to the house or adjacent to two rows of houses and which land is of irregular size and dimensions. The power to grant such land was given w.e.f. 16th of September, 1970 to the panchayats as agent of the government. For the villages, where population was upto 5,000, power was given to the Taluka Development Officer and in case, where the population was over 5,000 persons, the power was given to the District Development Officer.

4. It appears that by an order dated 15th of April, 1974 pursuant to the aforesaid government resolution, the land in question was allotted by Taluka Development Officer, Petlad to present petitioner - Harmanbhai G. Patel because he has applied for grant of such land vide the application dated 25th of June, 1973. By the impugned order passed on 15th of April, 1974, Taluka Development Officer, Petlad, granted the land in question which was of 18 feet wide from east to west and which was 43 feet in length from south to north totally admeasuring to 86 sq. yard of land at the rate of Rs. 4/- per sq. meter and such grant was made in favour of petitioner Harmanbhai G. Patel. It appears that thereafter one kabulat was also signed and the land was given to Harmanbhai G. Patel.

5. The respondent No.1 Bhagwanbhai Becharbhai Valand who was dissatisfied with the decision has preferred an

Appeal, being Appeal No. 3/A/1982 to the Deputy Collector, Petlad under Section 203 of the Bombay Land Revenue Code, who after issuing notice and hearing the parties, allowed the appeal and quashed and set aside the order of allotment dated 15th of April, 1974. It is not necessary for this court to go into the various reasons assigned by him for quashing and setting aside the said order as the learned advocates appearing for both the parties have shown their consensus in quashing and setting aside all orders and remanding the matter to the

Secretary (Appeals) under Section 211 of the Bombay Land Revenue Code for decision in accordance with the law and the Government Resolution.

6. Against the decision of the Deputy Collector, Petlad, dated 16th of February, 1983, it appears that appeal being Appeal No. LND 15 of 1983 was preferred before Collector, Kheda, who by an elaborate judgment and order, construed the very government resolution and dismissed the appeal. Being aggrieved by the order of the Collector, Kheda, a revision was preferred to Secretary (Appeals), Revenue Department by Harmanbhai G. Patel present petitioner, who also for a very cogent reasons recorded in Para-7 of the judgment, dismissed the appeal by judgment and order dated 15th of November, 1983.

7. At the hearing of this Special Civil Application, Mr. A.J. Patel, learned counsel appearing for the petitioner vehemently submitted before this court that the orders of the authorities below were not competent in law and were liable to be quashed and set aside while Mr. P.J. Vyas appearing for the respondent No.1 very vehemently supported the order of the lower authorities. The Collector, Kheda, respondent No.2 has preferred to file an affidavit-in-reply and has submitted that as per the resolution dated 16th of September, 1970, Taluka Development Officer, who is authorised to dispose of the government lands, such land is a strip of land or of irregular shape between the houses or between the houses and the road while the land in question is a plot of land admeasuring approximately 72 sq. meters and Taluka Development Officer has granted such land prior to the permission of the Collector and without following the procedure prescribed by Sections 92(2) and 98(1) of the Gujarat Panchayats Act.

8. Having gone through the various orders and the stand taken by the Collector, Kheda, in the affidavit in - reply, in my opinion, none of the orders passed in

favour of the petitioner can be sustained and the matter deserves to be remanded to the Secretary (Appeals), Revenue Department, for deciding the same in accordance with the Government Resolution under Section 211 of the Bombay Land Revenue Code.

9. In view of the aforesaid, all orders passed by the lower authorities are quashed and set aside and the matter is remanded to Secretary (Appeals), Revenue Department, directing him to decide such appeal in accordance with law and more particularly in accordance with the Government Resolution and to pass appropriate order in accordance with law.

10. In the result, Special Civil Application partially succeeds to the aforesaid extent only and the matter is remanded to Secretary (Appeals), Revenue

Department, for deciding the same in accordance with the provisions of Section 211 of the Bombay Land Revenue Code. Rule is made absolute to the aforesaid extent only. There shall be no order as to costs.

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